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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/977,787	11/20/97	MUZERI	1 511092-326

08/977,787 11/20/97 MUZERI

HM21/100.2

EXAMINER

MUZERI

ART UNIT	PAPER NUMBER
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1643

DATE MAILED:

10/02/98

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 7/27/98.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire \_\_\_\_\_ month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-52 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims 1-52 are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of Reference Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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Mizzen et al.

Art Unit: 1643

Examiner: Jay Williams

## DETAILED ACTION

### *Election/Restriction*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- 5           I.       Claims 1-5, 13-41, and 43-52, drawn to a vaccine comprising a fusion protein of stress protein and an antigen, classified in class 424, subclass 192.1.
- II.      Claims 6-12, 42 drawn to a vaccine comprising a polynucleotide sequence which encodes an antigen and a stress protein (i.e., DNA vaccine), classified in class 514, subclass 44 and class 536, subclass 23.4.

10         2.       Inventions I and II are different products. A peptide vaccine and a DNA vaccine are chemically distinct products with different chemical structures and different modes of action. In addition, the fusion proteins can be utilized in a materially different process such as in an immunoassay.

Because these inventions are distinct for the reasons given above and a search required for one group would not be required for another group and the groups have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

15         Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3.        Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

20         4.       Certain papers related to this application may be submitted to Group 1643 by facsimile transmission. Papers may be faxed via the PTO Fax Center in Crystal Mall I. The faxing of such papers must conform with

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the notices published Official Gazette, 1096 OG 30 (October 19, 1988) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6 (d)). The Fax Center number is 703-305-3014. Note: If applicants do submit a paper by fax, the original signed copy should be retained by applicants or applicants' representative. No duplicate copies should be submitted so as to avoid the processing of duplicate papers in the Office.

5        5. Any inquiry concerning this communication or earlier communications should be directed to Jay Williams whose telephone number is 703-305-7141. The examiner can normally be reached Monday-Friday from 8 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knod, can be reached at 703-308-4311. Any inquiry of a general nature or relating to status of this application should be directed to the Group receptionist whose telephone number is 703-308-3891.

10      Jay F. Williams

September 30, 1998

*Marian C. Knod*  
MARIAN C. KNODE  
SUPERVISORY PATENT EXAMINER  
GROUP 1800